IN THE SUPREME COURT OF BELIZE, A.D. 2013

CLAIM NO: 545 of 2013

BETWEEN

VILLAS AT DEL RIO LIMITED	**1st CLAIMANT**
STEVE BLAIR	**2nd CLAIMANT**

AND

ALEXANDRA HAUPTLI	**1st DEFENDANT**
DAVE HAUPTLI	**2nd DEFENDANT**

Keywords: Practice: Application to strike out Claim for abuse of process as it discloses no reasonable grounds for bringing Claim;

Registered Land Act; Leases under the Registered Land Act; Effect of Invalidity of Lease; Creation of Leases;

The Law of Contract; Privity of Contract;

Tort; Trespass to Land; Claim for Trespass; Who May Sue for Trespass to Land; Persons with Right to Possession.

Before the Honourable Mr. Justice Courtney A Abel

Hearing Dates: 17th February 2014
28th April 2014
19th June 2014

Appearances:

Ms. Ashanti Arthurs Martin for the Claimants.

Mr. Michael G. Peyrefitte for the Defendants.

RULING
Delivered on the 19th day of June 2014

Introduction

[1] This is an application filed on the 7th January 2014 by the 1st and 2nd Defendants ("the Applicants") against the 1st and 2nd Claimants ("the Respondents") to strike out the claim herein on the basis that it is an abuse of process as it discloses no reasonable grounds for bringing the claim; or alternatively for an order that the Respondents shall not without the permission of the court, commence a new claim against the Applicants arising out of acts which are the same or substantially the same as those in relation to this claim.

[2] The alternative application has not been argued.

Background

[3] In summary, the 1st and 2nd Respondents allege in their claim, filed on the 17th October 2013 that they are respectively the proprietors of 2 parcels of registered land operating as a condominium development (but is not a strata development) with 10 residential units known as "Bermuda Palms" which included a pool and also a bar known as 'Coco Loco's Bar' and which bar is leased to the 2nd Respondent for a term of 7 years commencing 1st February 2012 and terminating on 31st January 2019.

[4] The Coco Locos Bar is situate between the pool and the fence at Bermuda Palms, and occupies a portion of the walking path along the fence.

[5] Both Respondents brought their claim, including for temporary and permanent injunctions, against the Applicants who own and operate an adjacent or neighboring restaurant and bar known as 'Kama Lounge' which is separated from Coco Locos Bar by a fence.

[6] The Respondents allege that 1 units of the residential units are owned by a Hauptli Family Limited Partnership (the Partnership), and that the Applicants have the

right, through the Partnership, to manage that unit as well as the right to use and enjoy the common property, which includes the pool.

[7] The Respondents in the instant case, in relation to their claim, alleges that the 1st Respondent is the proprietor of the subject Properties and, though not expressly pleaded, the claim is on the basis, which is implied, that they (the Respondents) are and remain in possession of the common property of Bermuda Palms, save and except for Coco Locos Bar, which it is expressly pleaded has been leased to the 2nd Respondent and it is thereby implied that he (the 2nd Respondent) is in possession of it by virtue of this lease.

[8] The Respondents allege that the Applicants have been trespassing on and have continuously created a nuisance to the operation of the Respondents's business and so as to derogate from a lease granted by the 1st Respondent to the 2nd Respondent; and interfere with the Respondents' business operations (including the profitability) of the Coco Loco's Bar by soliciting customers of the Bermuda Palms and Coco Loco's Bar and allowing the Applicants' own customers access to the facilities of the Bermuda Palms all leading to arguments and even on occasion to violence erupting between the parties and to criminal proceedings.

[9] On the 6th December 2013 this Court granted an injunction restraining the Applicants, their servants, agents or assigns from doing the following things on the 1st Respondent's properties:

a) causing employees of Kama Lounge to enter upon the said properties to solicit customers

b) causing employees of Kama Lounge to escort patrons of Kama Lounge unto enter the properties to use the pool or other facilities on the properties

c) causing employees of Kama Lounge to serve drinks to any person while on the properties save and except that food and non-alcoholic beverages may be served to renters of unit 5 and persons there at their invitation

d) representing to patrons of Kama Lounge or guests at properties that the 1st and 2nd Applicants manage or that they can use the pool and facilities at the properties;

e) causing guests at other properties that the 1st and 2nd Applicants manage to use the pool and other facilities on the properties,

f) Walking through Coco Loco's Beach Bar.

[10] The Applicants on the other hand, allege in their Defence, filed on the 9th December 2014, that by virtue of ownership interest which it has in the 1st Respondent (10% shareholding) they are entitled by themselves and their customers to enter upon and to operate in and have full access and use of the facilities of the Bermuda Palms (including the common property of Bermuda Palms, the pool and the Coco Loco's Bar).

The Court Proceedings

[11] There has therefore been an ongoing dispute between these somewhat connected neighbors which has resulted in this fully contested claim.

[12] The interlocutory injunction was granted on the 6th December 2013, to the Respondents against the Applicants, and on terms which attempted to respect the Applicants' alleged interest in the Bermuda Palms, and to keep and hold the peace between the parties pending the resolution of this dispute.

[13] After the claim had been filed and served, this matter on the 6th December 2013, with the consent of the parties, was referred to court-connected mediation in an attempt for the parties to resolve their dispute by a collaborative process.

[14] The Applicants filed their Defence on the 9th December 2013.

[15] However, as often happens in disputes of this kind, even before the parties could agree to the selection of a mediator, or the court could appoint one under rules of court, much less a date being scheduled for the mediation session, the Applicants on the 7th January 2014 filed the present application to strike out the Respondents' claim which application was supported by an Affidavit of the 1st Applicant sworn to on the 30th December 2013 and filed on the 7th January 2014. The Respondents

rely on 1st, 2nd and 3rd Affidavits of Lynn Deiro the President of the board of directors of the 1st Respondent sworn to respectively on the 17th October 2013, 5th December 2013 and 14th February 2014.

[16] The parties were not able to settle their dispute at the scheduled mediation hearing heard on the 29th January 2014 and the strike out application now being considered, then came before this court for determination.

[17] Oral submissions were made in respect of the strike out application on the 17th February 2014.

[18] However, on 28th April 2014, the Court not being satisfied that the oral submissions adequately covered the required area for decision, requested that Counsel for the parties reconsider the matter particularly in relation to the following issues, and to make written submissions thereon:

(a) Who can institute a claim for trespass?

(b) Whether the Applicants have standing to challenge the legality of the Lease made between the 1st Claimant and the 2nd Claimant?

(c) Whether there is in existence any valid lease between the 1st Claimant and the 2nd Claimant?

[19] This Court is grateful for the written 'Further Submissions in Support of Application for Summary Judgment' filed herein by Counsel for the Applicants on the 30th May 2014 and the 'Written Submissions of the Respondents ' dated 16th June 2014 provided by Counsel for the Respondents.

The Strike out Application

[20] The basis of the present application to strike out is essentially that the land in question, being registered land, and because of alleged non-compliance with the terms of the Registered Land Act[1] ("RLA"), the 1st Respondent could not have granted, a valid lease to the 2nd Respondent, who could not therefore receive or hold a valid lease of the Coco Loco's Bar (on which the claim was based); and that therefore there is no cause of action which can arise to ground the claim.

[1] Chapter 194 Revised Edition 2000, Laws of Belize.

[21] The application was therefore argued on the basis of the provision of the RLA and the terms and effects of the Torrens system of registered title which was adopted by Belize and which has made provision for the introduction of this system of land registration; and by which a whole new scheme was sought to be gradually introduced.

[22] The directly applicable provision of the RLA relates to the statutory requirement for the registration of leases for a term greater than 2 years; and the effect of failure to comply with such registration.

[23] Also relevant to the present strike out application is the essential nature of the cause of action of trespass to land and, incidentally the general principles of the law of landlord and tenant.

The Issues to be determined in relation to the application

[24] It seems to me that the question for determination of this application is whether the Respondents have a valid cause of action against the Applicants as pleaded.

[25] The cause of action as pleaded relates essentially to trespass to land in the circumstance of a lease which ought to have been, but was not, registered under the RLA.

[26] The central issue for determination in relation to the present strike out application is whether the Respondents have the requisite standing to have brought this claim against the Respondents.

The Registered Land Act

[27] The RLA, and the system it seeks to establish, undoubtedly seeks to set up in relation to land generally, and more specifically to leases, an entirely new system of compulsory registration in relation to title to land and leases.

[28] But it is clear that in relation to leases that such registration is in respect of leases of land for a period greater than 2 years, to be in prescribed form, be completed by opening a register in respect of the lease in the name of the lessee, and the

filing of the lease in the encumbrance section of the register of the lessor's land or lease[2].

[29] The RLA also has a comprehensive scheme and provisions relating to leases, including leases subject to charges[3], future leases (leases to commence after 21 years after the instrument creating them is made) making them void[4], as well as for holding over (after a person has entered occupation of any land as lessee and continuing to occupy such land without the consent of the lessor after the termination of the lease) as a periodic tenancy[5].

[30] Pertinently, Section 3 of the RLA expressly provides that:

> *"Except as otherwise provided in this Act …no law, practice or procedure relating to land shall apply to land registered under this Act so far as it is inconsistent with this Act:*
>
> *Provided that except where a contrary intention appears nothing contained in this Act shall be construed as permitting any dealing which is forbidden by express provisions of any other law or as over-riding any provision of any other law requiring the consent or approval of any authority to any dealing".*

[31] Under Section 4 of the RLA it is provided that:

> *"The Minister may by Order declare any area to be a compulsory registration area from such date as may be specified in that Order and may at any time by a subsequent Order vary the limits of any such area."*

[32] By Sections 5-25 of the RLA the system for the 'Organisation and Administration of the land registration system' was established including, relating to the Land Registry and Officers, Land Register, Maps, Parcels, and Boundaries.

[33] Section 11 the RLA also provides:

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[2] See Section 49 of the RLA.
[3] See Section 51 of the RLA.
[4] See Section 53 of the RLA.
[5] See Section 54 of the RLA.

> *"… all dealings in relation to any land in the compulsory registration area named in accordance with this Act, and no dealing made otherwise than in accordance with this Act shall have any validity or effect."*

[34] Sections 26-33 of the RLA then makes provision for the 'Effect of Registration'.

[35] The RLA specifically states, by Section 28, under the 'Effect of Registration' of a lease, as follows:

> *"Subject to section 30, the registration of a person as proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied and expressed agreements, liabilities and incidents of the lease, but if the title of the lessor is a provisional title the enforcement of any estate, right or interest affecting or in derogation of the right of the lessor to grant the lease shall not be prejudiced."*

[36] Section 30 of the RLA then provides for overriding interests which includes (a) leases or agreements for leases for a term less than two years, and periodic tenancies within the meaning of section 2, and (b) the rights of a person in actual occupation of land or in receipt of the rents and profits thereof, except where inquiry is made of such person and the rights are not disclosed.

[37] Then crucially, Section 33 of the RLA has a provision deeming that every proprietor acquiring any land lease or charge shall be deemed to have had notice of entry in the register in relation to the land, lease or charge. Thus effectively making the registration of certain leases, known to the world.

[38] Section 40 of the RLA relates to dispositions of registered leases expressly making any dealings otherwise than in accordance with the RLA incapable of taking place; but Section 40(2) provides:

"Nothing in this section shall be construed as preventing any unregistered instrument from operating as a contract, but no action may be brought upon ……..any interest in land unless the contract upon which such action is brought, or some memorandum or note thereof, is in writing and is signed by the party to be charged or by some other person lawfully authorised by him:

Provided that such a contract shall not be unenforceable by reason only of the absence of writing, where an intending … lessee who has performed or is willing to perform his part of the contract-

(a) has in part performance of the contract taken possession of the property or any part thereof; or

(b) being already in possession, continues in possession in part performance of the contract and has done some other act in furtherance of the contract.

[39] Sections 47-66 of the RLA then makes specific provision for 'Leases' with Section 47 going on to specifically provide:

"Subject to this Act and to any other law, the proprietor of land may lease the land or part of it to any person for a definite period or for the life of the lessor or of the lessee or for a period which though indefinite may be terminated by the lessor or the lessee, and subject to such conditions as he thinks fit.

Provided that, if only part is leased, the lease shall be accompanied by a plan or other description which the Registrar, in his absolute discretion, thinks adequate to identify the part leased."

[40] Section 48 of the RLA then provides as follows:

48.-(1) Where in any lease the term is not specified and no provision is made for the giving of notice to terminate the tenancy, the lease shall be deemed to have created a periodic tenancy.

(2) Where the proprietor of land permits the exclusive occupation of the land or any part thereof by any other person at a rent but without any agreement in writing, that occupation shall be deemed to constitute a periodic tenancy.

(3) The period of a periodic tenancy created by this section shall

be the period by reference to which the rent is payable, and the tenancy may be determined by either party giving to the other notice the length of which shall, subject to any other law, be not less than the period of the tenancy and shall expire on the last day of the period of any periodic tenancy.

[41] Section 49 of RLA also provides:

"A lease for a specified period of or exceeding two year, or for the life of the lessor or of the lessee, or a lease which contains an option whereby the lessee may require the lessor to grant him a further term or terms which, together with the original term, is or exceeds two years, shall be in the prescribed form, and shall be completed by –

(a) Opening a register in respect of eh lease in the name of the lessee;

(b) filing the lease; and noting the lease in the encumbrances section for the register of the lessor's land or lease.

(c) noting the lease in the encumbrances section of the register of the lessor's land or lease."

[42] Finally Section 159 of the RLA, provides:

"Without prejudice to anything done or established thereunder, the General Registry Act and the Law of Property Act shall, upon the

first registration of any land under this Act, cease to apply to such land."

Effect of Invalidity of a Lease

[43] Assuming that non-compliance with the RLA renders any dealing, such as the purported creation of a lease in excess of 2 years[6] without registration under and as required by (or not in accordance with) the RLA, the question arises what would be the effect of such invalidity for the purported transaction? Would it be a total nullity or would it just make such a transaction legally invalid and ineffectual such that the law would consider it (i.e. the lease in excess of 2 years) not to have existed?

[44] It is trite law that a lease can be created without any formality (orally or in writing) where, inter alia, exclusive possession is granted of land and rent is paid for the use and occupation of such land, and there exists other badges and incidences of a lease, and a periodic tenancy may be thereby created.

[45] The position of leases at common law or in equity is usefully set out in Hill and Redman's Law of Landlord and Tenant[7], where it states:

"A lease for a term exceeding three years or at a rent less than the best which can be reasonably obtained without a fine, if created otherwise than by deed, is construed as an agreement for a lease, and specific performance of the agreement will be ordered ... In equity the lease is deemed to have been effectively granted, and for practical purposes, the parties are in much the same position as if the lease were valid in law. Where the above equitable doctrine does not apply, the effect of entry under the void lease, if followed by payment of rent, is to create a tenancy from year to year upon the terms of the instrument so far as applicable to such a tenancy."

[6] In relation to any land in the compulsory registration area,
[7] 18th Ed. At para. 646, page 267.

[46] Further and as submitted by the Respondents, the relationship of landlord and tenant is founded in contract. As such, the doctrine of privity of contract would apply. It is to be observed that as such:

> "*The doctrine of privity of contract is that, as a general rule, a contract cannot confer rights or impose obligations on strangers to it, that is, persons who are not parties to it.*[8]"

[47] In the Jamaican Supreme Court case of Carlton Forrester v Lorna Thompson[9] Gayle J, in discussing privity of contract relevantly opined that:

> *"Where there is privity of contract between the tenant and the landlord, only those parties can be said to be bound by the covenants contained in the lease. This privity of contract normally excludes a third party from suing upon, or from being sued, with respect to a covenant contained in a lease."*

[48] It does not therefore follow from the non-registration that nothing exists in law or equity. The written instrument may have no validity or effect, but the grant of exclusive possession, coupled with the payment of rent are sufficient to constitute a periodic tenancy.

Trespass to Land

[49] As noted above[10] there arises, from expressed and/or implied terms in the pleadings, that the Respondents are in possession of the subject properties, and also from the strike out application under consideration, there arises whether the Respondents or either of them are entitled to sue for trespass of land (the underlying cause of action of the present claim). The law relating to who may sue in relation to trespass to land becomes a relevant question.

[50] It is clear that the tort of trespass to land relates to the unlawful interference with a person's possession of land and is therefore "*an injury to a possessory right*[11]*"*.

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[8] See Halsbury's Laws of England, 4th Ed., Vol. 9 at para. 329.
[9] Claim No. C.L.F090 of 1999) at page 17.
[10] See Paragraph 7.
[11] Halsbury's Laws of England, Fourth Edition, Volume 45 Paragraph 1396.

This is clearly enunciated in a passage from Halsbury's Laws of England to which the Applicants referred and upon which they relied, as follows:

> *"Every unlawful entry by one person on land in the possession of another is a trespass for which an action lies, even though no actual damage is done. A person trespasses upon land if he wrongfully sets foot on it, rides or drives over it or takes possession of it, or expels the person in possession , or pulls down or destroys anything permanently fixed to it, or wrongfully takes minerals from it, or places or fixes anything on it or in it, or if he erects or suffers to continue on his own land anything which invades the airspace of another, or if he discharges water upon another land, or send filth or any injurious substance which has been collected by him on his own land onto another's land."*[12]

[51] It is also clear that such right of possession can be acquired by any lawful possession of land, and a person may maintain trespass against any other person who, being in possession of land at the time of entry, wrongfully continues on the land; and that even an occupier of lodgings can sue in trespass if he has exclusive possession[13], provided that such person can prove (as a question of fact) actual possession[14] or indeed any other:

> *"form of possession, so long as it is clear and exclusive and exercised with the intention to possess, is sufficient to support and action of trespass against a wrongdoer* [15]*".*

[52] The law appears to even envisage that it may not even be necessary to plead trespass to land specifically in a statement of claim[16].

[53] Moreover, it is noteworthy, as observed by the learned writers of Halsbury's Laws of England, upon which the Respondents relied, that:

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[12] Ibid Paragraph 1384.
[13] Halsbury's Laws of England, Fourth Edition, Volume 45 Paragraph 1396.
[14] Ibid Paragraph 1394
[15] Ibid.
[16] Ibid Paragraph 1384 at Note 3. See Drane v Evangelou [1978] 2 All ER 437.

"It is not necessary, in order to maintain trespass, that the plaintiff's possession should be lawful, and actual possession is good against all except those who can show a better right to possession in themselves.[17]*"*

Contention of the Parties

[54] The Applicants contend:

(a) That the Land in question, including the Coco Loco's Bar is registered land and governed by the RLA.

(b) That as a result of the pleaded lease purportedly granted by the 1st Respondent to the 2nd Respondent, for that lease to be recognized in law it has to comply with the RLA which states that whenever anything is done concerning that Act, if it does not follow, or is not compliant with, the Act, then such dealing is invalid and without effect.

(c) That by virtue of the Section 4 of the RLA the alleged lease, which purports to be for a term of years, is without validity or effect, and therefore fails for non-compliance with the RLA, and so there is no lease.

(d) Also that common law principles applicable to land law then, would not be relevant to lands which are subject to and governed by the RLA.

[55] It was also submitted by the Applicants that where a lease is for a definite or indefinite period (including a periodic tenancy) of only part of the land, the lease is required to be accompanied by a plan or other adequate description acceptable to the Registrar to identify the part leased, in compliance with Section 47 of the RLA, which is an absolute requirement so as to make clear the demarcation of the land for the purpose of the Act.

[56] The Respondents disagree with the contentions of the Applicant arguing that careful examination of Section 11 of the RLA reveals that such provision was not intended to invalidate any and all transaction not in compliance with its terms. The Respondents seek to draw a distinction between dealings which are merely

[17] Ibid.

matters of form, from matters which are instead matters of substance with the intent of the RLA being not to invalidate transactions merely because of a technical non-compliance with the Act. That even if the transaction does not comply with the Act it is not void of legal effect.

[57] The Respondent further concedes that the clear language of section 11 of the RLA is to render the written lease invalid. However, the Respondent submits that the fact that the written lease is invalid, does not derogate from the fact that the relationship of landlord and tenant would continue to exist between the Respondents by virtue of the grant of exclusive possession of Coco Locos Bar to the 2nd Respondent, and the payment by him of rent to the 1st Respondent.

[58] The Respondents submit that it does not therefore follow from the non-registration that nothing exists in law or equity, rather that the written instrument may have no validity or effect, but the grant of exclusive possession coupled with the payment of rent are sufficient to constitute a periodic tenancy. This submission is somewhat inconsistent with the Respondents' submission that the effect of non-compliance to register a document (including a lease) is to render the transaction void.

[59] The Respondents have also submitted that there are 2 possibilities in such a case, (1) the title to the legal estate reverts back to the transferor who holds it on a bare trust for the transferee, or (2) the grant has an effect as a contract made for valuable consideration to grant or create the legal estate concerned.

[60] The Respondents also submit that even if the Lease is invalid by virtue of the RLA, then the 2nd Respondent is in actual possession of Coco Locos Bar and therefore has a legal right to restrain trespass. That it is not necessary, in order to maintain an action for trespass, that the plaintiff's possession may even be lawful and that the Court should not therefore be concerned with the legality of the possession, but only the fact that the 2nd Respondent is in possession of Coco Locos Bar.

[61] It is the Respondents' submission that, as strangers to the Lease, the Applicants have no legal standing to challenge the legality of the lease. That as between the

1st Respondent (landlord) and 2nd Respondent (tenant) there is no dispute as to the existence of the lease, or the legal obligations that flow therefrom.

The CPR 2005 Procedure and law in relation to strikeout

[62] Part 9.7(1) of the Supreme Court (Civil Procedure) Rules 2005 (CPR 2005) provides:

> *"A defendant who –*
>
> *(a) disputes the court's jurisdiction to try the claim; or*
>
> *(b) argues that the court should not exercise its jurisdiction;*
>
> *may apply to the court for a declaration to that effect."*

[63] Part 9.7(6) of the CPR 2005 provides:

> *"Any order under this Rule may also –*
>
> *(a) strike out any statement of claim;*
>
> *(b) set aside service of the claim form; and*
>
> *(c) discharge any order made before the claim was commenced orthe claim form served."*

[64] Part 26.3(1) of the CPR 2005 provides:

> *"In addition to any other powers under these Rules, the court may strike out a statement of case or part of a statement of case if it appears to the court -*
>
> *(a) ...;*
>
> *(b) .....*
>
> *(c) that the statement of case or the part to be struck out discloses no reasonable grounds for bringing or defending a claim. "*

[65] As I recently noted in the case of *Anthony Rath & Naturallight Productions Limited v Birdsall, Voss & Associates (Civil Claim No. 456 of 2011),* in relation to a strikeout application, that the power to strike out a claim should be exercised sparingly and is appropriate only in the most plain, clear and obvious case including;

> "*where the claim sets out no fact indicating what the claim is about or if it is incoherent and makes no sense, or if the facts it*

states, even if true, do not disclose a legally recognizable claim against the Applicants ."

[66] I also accepted in that case that the following circumstances may be identified as providing reasons for not striking out a statement of case:

(a) where the argument involves a substantial point of law which does not admit of a plain and obvious answer; or

(b) the law is in a state of development; or

(c) where the strength of the case may not be clear because it has not been fully investigated. It is well settled that the jurisdiction to strike out is to be used sparingly since the exercise of the jurisdiction deprives a party of its right to a fair trial, and its ability to strengthen its case through the process of disclosure and other court procedures such as requests for information; and the examination an cross-examination of witnesses often change the complexion of a case.

(d) that a court may conclude that a statement of case (including a Statement of Claim) ought to be stuck out in a case where there is coherent set of facts, and that such facts, even if true, do not disclose any legally recognizable, or valid claim, as a matter of law, against the Applicant; or where the court considers that the claim is bound to fail.

[67] I specifically relied on the dicta of Mde, Justice Edwards in *CITCO Global Custody NV v Y2K Finance Inc, HCVAP 2008/022*, in the British Virgin Islands case, of the Eastern Caribbean Supreme Court, Court of Appeal, that

"Striking out under the English CPR, r3.4(2)(a) which is the equivalent of our CPR 26.3(1)(b) is appropriate in the following instances: where the claim sets out no fact indicating what the claim is about or if it is incoherent and makes no sense, or if the facts it states, even if true, do not disclose a legally recognizable claim against the Applicants ."

Determination

[68] It seems to me that the application is misplaced, wide of the mark and misses the point of a strike out application by assuming that the Respondents are required to establish that they have registered title to the lands in question: namely the lands comprising the Bermuda Palms and the Coco Loco's Bar.

[69] It also seems to me that by section 47 of the RLA, a proprietor of land (undoubtedly the 1st Respondent in relation to the lands in question) may lease its land or part of it, subject to the RLA, but also subject to "any other law", for a definite period under 2 years or for the life of the lessor or of the lessee, for an indefinite period and though indefinite, may be terminated by the lessor or the lessee.

[70] Consequently, even if the alleged lease for 7 years may amount to a dealing not in accordance with the Act (by not being registered) and therefore as such shall not "have any validity or effect" and as such is ineffectual. It may not be entirely void or otherwise ineffectual in creating a periodic tenancy terminable by the lessor on notice based on the common law of landlord and tenant, for the creation of a lease by the grant of exclusive possession of land.

[71] As an unregistered lease for 7 years, though ineffectual to create a 7 year lease, under and by virtue of Section 40(2) of the RLA, and the principles of law governing leases generally, the transaction of granting exclusive possession and the payment of rent may have the result of the unregistered lease instrument taking effect as a contract or agreement for a lease of which there is a note or memorandum in writing and of which the parties thereto (the Respondents) have performed and acted in furtherance of the contract.

[72] Further, in any event, there is no suggestion that the 1st Respondent does not have the right to enforce the claim which it has brought against the Applicants, by itself.

[73] In any event it is clear, and I so determine, that the law in relation to the tort of trespass to land does not require the Respondents to be the registered proprietor or

owner of the land in question but merely the persons in occupation possessing a better title than the Applicants – which clearly the Respondents do as persons in possession.

[74] The Respondents have on their pleadings pleaded a case that contends that they are respectively the owners and the lessees of the lands in question and have a right to be there and raise the clear case that they have a sufficient basis to bring the claim against the Applicants, which claim is a matter for trial.

[75] I am also doubtful, which has not been fully argued before me (and therefore I would not ground my decision on this basis alone), that the Applicants have the right to challenge the right and title of the 2nd Respondent to bring the claim against the Applicants.

[76] The Applicants, as strangers to the contract for a lease upon which they have brought this claim (not being parties) it is doubtful that they are in a position, are privy, to the relationship which may exist between the Respondents (as landlord and tenant); and the Applicants as strangers to the Lease, it is doubtful whether they have any legal standing to challenge the legality of the lease which the Respondents, as parties both suing on (clearly by their joint claim against the Applicants) and are recognizing as conferring benefits and burdens on each other under it.

[77] It is therefore doubtful if the Applicants, as stranger, can insert themselves between the Respondents to challenge the legality of an arrangement which the Applicants as parties to the transaction in question (the lease) both recognize as a valid lease conferring rights and imposing obligations upon each and both of them, and have clearly made a common cause by bringing the present claim against the Applicants.

[78] These conclusions I have reached even if I accept the Applicants' contention that the lease for 7 years of part of the land in question (of the Coco Loco's Bar) is and ought to have been registered under the RLA and may therefore be of no legal validity and effect.

[79] I have reached the conclusion that the strength of the Respondents', and indeed the Applicants', case is at this stage not clear and clearly needs investigation at a trial because it has not and cannot be fully investigated at this stage just on the pleadings.

[80] I do not therefore consider that it would be appropriate at this stage to strike out the Respondents' case, which striking out, it is clear, should be used only sparingly since the exercise of this jurisdiction deprives a party of its right to a fair trial, and its ability to strengthen its case through the process of disclosure and other court procedures such as requests for information and the examination and cross-examination of witnesses.

[81] I also have concluded that the statement of case (including the Statement of Claim) discloses a reasonably coherent set of facts based on the causes of action in trespass, and that such facts, if true, do disclose a legally recognizable, or valid claim as a matter of law, against the Applicants.

[82] Finally, I cannot say at this stage, based on the pleadings that I consider that the claim is bound to fail.

[83] In these circumstances I can only come to the conclusion that the Applicants' application should be dismissed.

Costs

[55] In the above circumstances, and based on the conclusions upon which I have arrived, and on the merits of the case and the conduct of the Applicant generally, I consider that justice will be served if costs of the application filed herein on the 7th January 2014 are awarded against the Applicants in the sum of $2,500.00 which the Applicants must pay to the Respondents on or before the 11th day of July 2014.

Disposition

[56] For the reasons given above I order that the Applicants' application filed herein on the 7th January 2014, to strike out the Respondents' claim is dismissed and that

the Applicants shall pay the Respondents' costs of the application in the sum of $2,500.00.

The Hon Mr. Justice Courtney A. Abel